

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

VISION TECHNOLOGIES MARINE, INC.

Plaintiff,

VERSUS

BOUCHARD TRANSPORTATION CO., INC.

Defendant

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CIVIL ACTION NO. 1:19-cv-344-LG-RHW

JUDGE _____

MAGISTRATE _____

COMPLAINT

NOW COMES, Plaintiff, Vision Technologies Marine, Inc. (“VT Marine”), through undersigned counsel, files this Complaint against Bouchard Transportation Co. Inc., (hereafter “Bouchard”) pursuant to Federal Rule of Civil Procedure 9(h), seeking damages for breach of contract that includes interests calculated until paid in full, as well as, attorney’s fees. VT Marine alleges upon information and belief as follows:

I. PARTIES

1. Plaintiff is Vision Technologies Marine, Inc. (“VT Marine”). At all material times, VT Marine was and is a corporation organized under the laws of Delaware with its principal place of business in Pascagoula, Mississippi.

2. Defendant Bouchard Transportation Co., Inc., is a corporation organized and existing under the law of New York, with its principal offices located in Melville, New

York. Service of process may be made by serving Morton S. Bouchard III at 48 South Service Rd, Suite 150, Melville, New York, 11747.

II. JURISDICTION AND VENUE

3. This Complaint presents maritime claims within the meaning of Federal Rule of Civil Procedure 9(h).

4. This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1333.

5. Venue is proper in the Southern District of Mississippi pursuant to 28 U.S.C. § 1391(b)(2) and (b)(3).

III. FACTS

8. VT Marine is a shipyard which engages in ship repair for both public and private clients.

9. Bouchard is a barge company which owns and operates vessels for the purpose of transportation of petroleum and other materials.

10. Bouchard has engaged VT Marine for the construction and repair of its vessels since 2017.

11. On March 23, 2018, VT Marine and Bouchard executed Work Order Nos. 001 and 002 (the “Barge 255 Work Orders”) under which VT agreed to provide goods and services to Bouchard for Barge 255. *See* Barge 255 Work Orders, attached as Exhibit A.

12. Paragraph 7 of the Barge 255 Work Orders provides that if Bouchard fails to make payment of amounts owed for the goods and services provided pursuant to the

Barge 255 Work Orders on the due date, then VT Marine shall be entitled to charge Bouchard a rate of 12% interest per annum until payment is full in made. *See* Exhibit A, ¶7.

13. Paragraph 24 of the Barge 255 Work Orders provides that any disputes arising out of Work Order Nos. 001 and 002 shall be resolved in the United States District Court for Southern District of Mississippi. *See* Exhibit A, ¶24.

14. Paragraph 24 of the Barge 255 Work Orders also provides that Bouchard shall pay all legal charges, including without limitation to attorney fees, incurred by VT Marine in the event a court of competent jurisdiction awards judgment in VT Marine's favor. *See* Exhibit A, ¶24.

15. On November 21, 2018, VT Marine and Bouchard executed a Master Service Agreement ("MSA") under which VT Marine agreed to provide goods and services to Bouchard pursuant to work orders to be issued by Bouchard. *See* Master Service Agreement, attached as Exhibit B.

16. VT Marine issued Work Orders for services, labor, and materials to be provided by VT Marine to the M/V DONNA J. BOUCHARD, M/V KIM M. BOUCHARD, Barge 240, Barge 272 and additional goods and services to be provided to Barge 255 based upon the Purchase Orders issued by Bouchard.

17. On February 18, 2019, Bouchard approved Works Order WO-003 for services, labor, and materials to be provided by VT Marine to Barge 272.

18. On March 4, 2019, Bouchard issued Purchase Orders 9056857 and 9056862 for services, labor, and materials to be provided by VT Marine to the M/V DONNA J. BOUCHARD and Barge 272.

19. Paragraph 7 of the MSA provides that if Bouchard fails to make payment of amounts owed for the services, labor and materials provided under the Work Orders on the due date, then VT Marine shall be entitled to charge Bouchard a rate of 3% interest per annum until payment in full is made. *See* Exhibit B, ¶7.

20. Paragraph 25 of the MSA provides that any disputes arising out of the MSA shall be resolved in the United States District Court for Southern District of Mississippi. *See* Exhibit B, ¶25.

21. Paragraph 25 of the MSA also provides that Bouchard shall pay all legal charges, including without limitation to attorney fees, incurred by VT Marine in the event a court of competent jurisdiction awards judgment in VT Marine's favor. *See* Exhibit B, ¶25.

22. On March 23, 2018 and November 21, 2018, pursuant to the Barge 255 Work Orders and the Work Orders, respectively, Bouchard engaged VT Marine to perform repairs and provide necessities to the M/V DONNA J. BOUCHARD, M/V KIM M. BOUCHARD, Barge 240, Barge 255, and Barge 272.

23. VT Marine provided services, labor and materials, including steel repair, to Barge 255 at the request of Bouchard pursuant to the Barge 255 Work Orders. VT Marine billed Bouchard for this work in the amount of \$42,142.72 on April 16, 2018

through Invoice V01580401, for which payment was due on May 16, 2018. *See* Invoice No. V01580401, attached as Exhibit C.

24. VT Marine provided services, labor and materials to Barge 255 at the request of Bouchard pursuant to Work Order No. 005, Rev.1. This work included pipe repairs and bilge cleaning. VT Marine billed Bouchard for this work in the amount of \$4,787.00 on May 1, 2018 through Invoice V01580402, for which payment was due on May 31, 2018. *See* Invoice No. V01580402, attached as Exhibit D.

25. VT Marine provided services, labor and material to M/V KIM M. BOUCHARD at the request of Bouchard pursuant to Work Order No. 001. This work included supplying materials and labor, as well as, facilitated third party, Signet Maritime's services. VT Marine billed Bouchard for this work in the amount of \$7,124.60 on September 11, 2018 through Invoice V03080901, for which payment was due on October 11, 2018. *See* Invoice No. V03080901, attached as Exhibit E.

26. VT Marine provided services, labor and materials to Barge 240 at the request of Bouchard pursuant to Work Order Nos. 001, 002, 003, 004, and 005. This work included the following services: pursuant to Work Order No. 001, VT Marine provided general services to Barge 240, which totaled \$6,433.00; pursuant to Work Order No. 002, VT Marine provided repairs to cargo tanks, which totaled \$10,742.00; pursuant to Work Order No. 003, VT Marine provided a drip pan doubler, which totaled \$2,609.00; pursuant to Work Order No. 004, VT Marine provided weld repair services, which totaled \$3,164.00; and pursuant to Work Order No. 005, VT Marine provided slops removal and disposal services, which totaled \$7,476.00. VT Marine billed

Bouchard for this work in the aggregate amount of \$30,424.00 on January 11, 2019 through Invoice V07090101, for which payment was due on March 12, 2019. *See* Invoice No. 07090101, attached as Exhibit F.

27.VT Marine provided services, labor and materials to the M/V DONNA J. BOUCHARD at the request of Bouchard pursuant to Purchase Order No. 9056857. This work included various repairs for reach rods, fuel tanks, leaking ball valves, replacing broken pipes, re-welding brackets, installing rod props, replacing temporary repairs, repairing leaking exhausts, and replacing leaking gaskets. VT Marine billed Bouchard for this work in the amount of \$79,442.00 on March 15, 2019 through Invoice V0730001, for which payment was due on April 14, 2019. *See* Invoice No. V0730001, attached as Exhibit G.

28.VT Marine provided services, labor and materials to M/V DONNA J. BOUCHARD and Barge 272 at the request of Bouchard pursuant to Work Order No. 003. This work included various services and the provision of supplies to the vessels including potable water services, line handler, gangways, crane support for gangway, trash services, paint, oily rag disposal, lifeboat removal crane, and the placement of cylinders onboard for crane. VT Marine billed Bouchard for this work in the amount of \$20,540.00 on March 15, 2019 through Invoice V0730002, for which payment was due on April 14, 2019. *See* Invoice No. V0730002, attached as Exhibit H.

29.VT Marine provided services, labor and materials to Barge 272 at the request of Bouchard pursuant to Work Order No. 003. This work included various repairs and services including vent bolts, ballast tanks, hatch pins, AC technician for

overhead insulation, fuel tank cleaning, replacement of parts of crane, ballast tank vent and inspection to assist with USCG inspections. VT Marine billed Bouchard for this work in the amount of \$85,640.00 on March 15, 2019 through Invoice V0740001, for which payment was due on April 14, 2019. *See* Invoice No. V0740001, attached as Exhibit I.

30. In violation of the terms of the Work Orders and MSA, Bouchard has not paid VT Marine for any of the work billed through the aforementioned invoices (collectively, the “Invoices”).

31. A summary of the Invoices and interests due for failure to pay calculated as of today is as follows:

Vessel(s) Name	Invoice #	Amount Due on Invoice	Interest Due	Due Date	# of Days Late	Interest Due As of Today	Total Due
Barge 255	V01580401	\$ 42,142.72	\$ 13.86	5/16/2018	404	\$ 5,597.48	\$ 47,740.20
Barge 255	V01580402	\$ 4,787.00	\$ 1.57	5/31/2018	389	\$ 612.21	\$ 5,399.21
KIM M. BOUCHARD	V03080901	\$ 7,124.60	\$ 0.59	10/11/2018	256	\$ 149.91	\$ 7,274.51
Barge 240	V07090101	\$ 30,424.00	\$ 2.50	3/12/2019	104	\$ 260.06	\$ 30,684.06
DONNA J. BOUCHARD	V0730001	\$ 79,442.00	\$ 6.53	4/14/2019	71	\$ 463.59	\$ 79,905.59
DONNA J. BOUCHARD	V0730002	\$ 20,540.00	\$ 1.69	3/15/2019	101	\$ 170.51	\$ 20,710.51
Barge 272	V0740001	\$ 85,640.00	\$ 7.04	4/14/2019	71	\$ 499.76	\$ 86,139.76
						TOTAL DUE AS OF 6/24/19:	\$ 277,853.85

See Exhibits C - I.

32. After repeated demands for payment, on June 3, 2019, VT Marine made formal demand upon Bouchard to provide payment on the Invoices stating “[w]e are again making formal demand for payment for these outstanding debts within 7 days, failing which we will enforce our contractual and legal rights to recover the debts.” *See* 6/3/2019 Letter to Morton Bouchard, attached as Exhibit J.

33. Bouchard did not respond to the June 3, 2019 letter attached hereto as Exhibit J.

34. No payments have been made by Bouchard to VT Marine on any of the Invoices.

35. Bouchard has failed to make proper payment for the labor, materials, equipment, and repairs provided to the M/V DONNA J. BOUCHARD, M/V KIM M. BOUCHARD, Barge 240, Barge 255, and Barge 272, despite VT Marine's repeated demands upon Bouchard for payment due.

36. As reflected in paragraphs 21 to 29 and Exhibits C to I, VT Marine has provided \$270,100.32 in work, labor and materials to the M/V DONNA J. BOUCHARD, M/V KIM M. BOUCHARD, Barge 240, Barge 255, and Barge 272. VT Marine is also entitled to interest on the outstanding payments due under the Barge 255 Work Orders for work and services provided to Barge 255 at a rate of 12% per annum, as well as, interest on the outstanding payments due under the Work Orders at a rate of 3% per annum, which brings the total outstanding amounts due to \$277,853.85. Interest continues to accrue.

IV. CAUSES OF ACTION

BREACH OF CONTRACT

37. VT Marine incorporates and restates all foregoing allegations as if copied here *in extenso*.

38. VT Marine and Bouchard entered into the MSA, and Bouchard approved the Barge 255 Work Orders and other Work Orders, in which VT Marine undertook an

obligation to provide various services, labor and materials to specific Bouchard vessels, and Bouchard undertook an obligation to pay for VT Marine's services, labor and materials.

39. Bouchard issued the Purchase Orders and approved Work Orders to VT Marine pursuant to the MSA for the provision of goods and services to the M/V DONNA J. BOUCHARD, M/V KIM M. BOUCHARD, Barge 240, Barge 255, and Barge 272. VT Marine performed its obligations under Barge 255 Work Orders, the MSA, and the Work Orders.

40. Bouchard, however, has not performed its contractual obligation to pay for the goods and services provided and accepted on behalf of the M/V DONNA J. BOUCHARD, M/V KIM M. BOUCHARD, Barge 240, Barge 255, and Barge 272.

41. Bouchard's non-performance is a breach of the parties' agreement.

42. VT Marine has been damaged by Bouchard's failure to pay the Invoices.

43. As a result of this breach, Bouchard owes the amounts due per the Invoices, in addition to penalties, interest, and attorney fees.

44. As of June 19, 2019, Bouchard owes VT Marine \$277,853.85 for the work performed on the M/V DONNA J. BOUCHARD, M/V KIM M. BOUCHARD, Barge 240, Barge 255, and Barge 272.

ATTORNEY'S FEES

45. As a result of Bouchard's breach, and its failure and refusal to pay for the goods and services provided, VT Marine has been forced to retain legal counsel and seeks reimbursement for its reasonable attorney fees as provided for in Paragraph 24 of the

Barge 255 Work Orders, Paragraph 25 of the MSA, and as required by the laws of this Honorable Court.

V. PRAYER FOR RELIEF

46. For these reasons, VT Marine requests the following:

- a. That this Complaint be deemed good and sufficient;
- b. That a judgment be entered in favor of VT Marine, Inc. against Bouchard Transportation Co., Inc., for the amounts due and owing of at least \$277, 853.85 together with post judgment interest, costs of suit and attorney's fees; and
- c. That VT Marine have such further and different relief as the Court may deem just and proper.

Respectfully submitted,

GORDON REES SCULLY MANSUKHANI, LLP

/s/ Allison R. Colon

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Attorney for Vision Technologies Marine, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon all other counsel of record via the Court's ECF system, by depositing said copy in the United States Mail, properly addressed and first-class prepaid, and/or by facsimile and/or email delivery on this 25th day of June, 2019.

/s/ Allison R. Colon
ALLISON R. COLON (MS Bar #103068)